IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 745 of 2000
in
SPECIAL CIVIL APPLICATION No 9149 of 1998
with
CIVIL APPLICATION No 10415 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANTIJI AMARJI THAKORE

Versus

ADARSH NIVASI SCHOOL

Appearance:

1. LETTERS PATENT APPEAL No. 745 of 2000
MR PK JANI for Appellant No.
RULE SERVED for Respondent No. 1
GOVERNMENT PLEADER for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA

and

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 09/10/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE RAVI R.TRIPATHI)

#. The present Letters Patent Appeal is preferred by Kantiji Amarji Thakore, original petitioner, being aggrieved by the order passed by the learned Single Judge (Coram : Miss.R.M.Doshit, J.) dated 29.2.2000 dismissing the writ petition in limine.

#. The petition was filed as service of the petitioner was terminated without giving any show cause notice or even without giving anything in writing orally with effect from 17.8.1998. The case of the petitioner is that the petitioner was appointed as Peon with effect from 4.1.1991 on probation vide appointment letter dated 18.1.1991 till 31.1.1991. The petitioner's term of appointment was extended from 2.2.1991 to 28.2.1991. The same was again extended from 2.3.1991 to 30.3.1991. The petitioner continued in service as a daily-wager on probation until his service came to be terminated in the year 1998. The petitioner made an application / representation on 9.8.1991 to the appropriate authority in the Social Welfare Department for making his appointment permanent. As the petitioner did not hear anything from the authorities, he made another application on 28.12.1991, but the petitioner was not given any reply.

#. The learned Single Judge (Coram : Miss.R.M.Doshit, J.) by order dated 29.2.2000 dismissed the petition mainly on the ground that, the respondent no.1 is a private school, receiving grant from the Government and merely because the respondent no.1 receives grant from the Government, it does not become 'State' within the meaning of Article 12 of the Constitution of India and hence no writ shall lie against the respondent no.1.

#. When the matter was taken up for hearing, learned AGP, Mr.Sood produced a photostat copy of the letter dated 29.9.2003 of District Welfare Officer, Mehsana addressed to the Government Solicitor, High Court, wherein it is stated that the respondent No.1 school-"Adarsh Nivasi School, Kheralu" is a Government School and that the same is under the control of "Vikasit Jati Kalyan Department" of Government of Gujarat and that it is under the control of the District Social Welfare

Officer. From the said letter it is clear that the respondent school is a "State" within the meaning of Article 12 of the Constitution of India. In view of the above, the basis on which the learned Single Judge was pleased to dismiss the petition does not survive. In our considered opinion, the order passed by the learned Single Judge is required to be quashed and set aside and the matter is required to be remanded to the learned Single Judge for consideration in accordance with law.

#. In the result, the present Letters Patent Appeal is allowed and the judgment and order of the learned Single Judge is hereby quashed and set aside. The matter is remanded to the learned Single Judge with a request to decide the same afresh in accordance with law at the earliest. No order as to costs.

#. Civil Application for stay is disposed of as the main Letters Patent Appeal is allowed.

(B.J.Shethna, J.)

(Ravi R. Tripathi, J.)

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